

**Very Important : Asked in Mains**

## **OPINIONS OF THIRD PERSONS WHEN RELEVANT**

### **EVIDENTIARY VALUE OF EXPERT EVIDENCE**

## **OPINION OF THIRD PERSON WHEN RELEVANT? (Section 45-51)**

Most of the times it is the general rule that the opinions of third person or party is irrelevant.

**However there are some instances/exceptions when the opinion of third person is taken into consideration.**

## **When court will take help of expert opinion? (section 45)**

When the court has to form an opinion on the point of-

- 1. Foreign Law**
- 2. Science**
- 3. Art**
- 4. Identity of Handwriting**
- 5. Finger Impressions**

Then the opinions upon that point of persons specially skilled in Foreign Law, Science, Art, Identity of Handwriting, Finger Impressions are relevant facts.

### **Who is an expert?**

Expert is one who is specially skilled in a matter. But it is no where essential that expert must hold any degree or particular attainment.

#### *Abdul Rehman v State of Mysore*

Whether the professional goldsmith is an expert or not? The court said particular attainment or degree is not mandatorily required. His qualification of being skilled is enough for opinion on any matter.

#### *Aziz Bano v Mohd Ibrahim Hussain*

Court said that though Shia Law on marriage is of foreign origin cannot be said to be foreign law because it is the law of the land and in force in India.

## When is the opinion of third party relevant?

### **Section 45A: Opinion of Examiner of electronic evidence**

When in a proceeding the court has to form an opinion on any subject matter relating to any information transmitted or stored in any computer resource or any other electronic or digital form, the opinion of the examiner of electronic evidence referred to in **Section 79A of IT Act, 2000** is a relevant fact.

### **Section 46: Facts bearing upon opinions of experts**

When the opinion of an expert is relevant, then any fact which either support or contradict his opinion also becomes relevant. It is always open to parties to produce additional evidence like outstanding books, experiments etc.

*For Example-*

*Where madness of a person has been proved by a psychiatrist, then party may give additional evidence that madness is often a hereditary character of the person.*

### **Section 47: When the court has to form an opinion as to the person by whom any document was written or signed then whose opinion is relevant.**

Opinion of any person acquainted with the handwriting is relevant. It includes a person-

1. Who has seen that person write.

2. Who has secured (received) documents written by that person (in answer to documents written by himself or under his authority and addressed to that person.)
3. Who has in the ordinary course of business received documents written by that person or such documents are habitually received by him (to whom the letter is habitually submitted)
4. Even court can compare handwriting under **section 73**.
5. It includes opinion of expert under **section 45**.

### *Fakhruddin v State of MP 1967 SC*

Supreme Court held that handwriting may be proved by the evidence of a witness in whose presence the writing was done and this would be direct evidence, and if it is available then any other kind of evidence is rendered unnecessary.

*Note:* Under **section 73** court will compare handwriting to be proved with handwriting already admitted or proved.

### **Section 47A: Opinion as to electronic signature when relevant**

Regarding electronic signature, opinion of certifying authority which has issued the electronic signature certificate is a relevant fact.

### **Section 48: Opinion as to existence of right or custom, when relevant**

In the case of existence of any general custom or right the opinion of person who would have known if it existed are relevant.

*Illustration-*

*The right of the villagers of a particular village to use the water of a particular well are a general right within this section. The opinion of villagers will be relevant because person who would be likely to know of its existence are relevant.*

### **Section 49: Opinion as to usage, tenets etc when relevant**

When the court has to form opinion as to-

1. Usages and tenets of any body of men or family, or
2. Constitution and Government of any religious or charitable foundation.
3. Opinion of person having special means of knowledge.

### **Section 50: Opinion on relationship, when relevant**

When the court has to form an opinion as to relationship of one to another, the opinion, expressed by conduct as to existence of relationship either by-

- a. A family member
- b. Other person

Having special means of knowledge on the subject is a relevant fact. But such opinion shall not be sufficient to prove marriage in proceeding under-

- a. Indian Divorce Act, 1869
- b. In prosecution under **section 494, 495, 497, 498 of IPC.**

### **Section 51: Grounds of opinion when relevant**

The grounds or basis on which an expert makes his opinion are also relevant.

## **EVIDENTIARY VALUE OF EXPERT EVIDENCE**

Supreme Court in *Mobarik Ali v State of Bombay* said that if a witness were permitted to express its opinion and if it is relied then it may amount to delegation of judicial function and that is why the court should exclude it generally.

Further more statements of opinion are not merely superfluous but they may also mislead the court. Judge may rely in opinion too much and then there may be miscarriage of justice. The task of inference is on the court and not on the witness but the above general rule is subject to certain exceptions and reason behind exception is that in many cases of technical nature the opinion of expert does help the court to arrive at a satisfactory conclusion.

Furthermore as it is opinion of skilled person so it does have value. In many cases court does not possess that professional or specialised knowledge.

**Though this opinion of expert is necessary but it has certain issues-**

1. There is danger of error or deliberate falsehood.

2. After all it is an opinion, and human judgements are fallible. (*Fallible- error prone, open to error*)

3. The expert witness however impartial may be likely to be unconsciously prejudiced. And these factors seriously affects its probative force. (*Probative- having the quality or function of proving or demonstrating something; affording proof or evidence: Sentence Example- It places the probative burden on the defendant.*)

So the reliability of such evidence has to be tested in such way in which any other piece of evidence is tested.

In this context it is the duty of court to call upon expert to explain the reason for its opinion and then to form opinion as to whether or not expert opinion is satisfactory. The court should not surrender its opinion to that of expert.

**Expert opinion is an opinion on the basis that opinion court has to form its own opinion but at the same time court has to be cautious as it is only an opinion and not mandatory for court to obey the same.**

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